

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

14 CR. 272 (JSR)

5 ANTHONY ALLEN and ANTHONY
6 CONTI,

7 Defendants.
8 -----x

9 New York, N.Y.
10 October 13, 2015
11 9:45 a.m.

12 Before:

13 HON. JED S. RAKOFF,

14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
18 Southern District of New York

19 BRIAN R. YOUNG

20 CAROL SIPPERLY

21 MICHAEL T. KOENIG

22 Assistant United States Attorneys

23 WILLKIE & GALLAGHER LLP

24 Attorneys for Defendant Anthony Allen

25 BY: MICHAEL S. SCHACHTER

CASEY DONNELLY

TOR EKELAND, P.C.

Attorneys for Defendant Anthony Conti

BY: TOR EKELAND

AARON WILLIAMSON

1 MR. SCHACHTER: Sure. Presumably, they can get that
2 through their cooperating witnesses who are much more like the
3 defendants, and they'll testify about their understanding, I
4 suppose, of the importance of LIBOR and perhaps the government
5 will have evidence that will show exactly what our clients'
6 understanding was of LIBOR. That may be probative.

7 To have an expert witness testify about that is really
8 too far afield and is inappropriate. They can do it through
9 actual fact witnesses that will testify about their
10 interactions with the defendants.

11 The second point that I wish to make is with respect
12 to effect on a financial institution. That is not even close.
13 The government has alleged -- effect on the financial
14 institution is alleged in the indictment.

15 The way they're going to prove it is presumably
16 because there is a financial institution on the other side of a
17 particular swap contract, and they're going to show an act of
18 where there was a false and fraudulent LIBOR submission made on
19 a particular day and that affected a particular financial
20 institution.

21 They cannot satisfy this element, and the jury should
22 not be invited to speculate that, well, you know, there are
23 150 trillion swaps out there. So we can all guess that there
24 might be a financial institution that may be part of another
25 and may be affected. That is inviting the jury to speculate

and is irrelevant.

If the government cannot show an effect on a financial institution through their direct allegations, which is a financial institution on the other side of a swap, then they are not going to satisfy those elements, and they should not be allowed to try to satisfy those elements through the jury's speculation about the 150 swaps that may have theoretically been impacted.

THE COURT: I'm going to allow certain of this and not others. I'll tell you specifically why and which. First the which. I will not allow the last sentence, and I'm not going to allow references to mortgages and credit cards and stuff like that. I think student loans were in the indictment.

That seems to me to be not only remote from the charges in this case but also calculated to invoke sympathy for the government's position and lack of sympathy for the defendant. Therefore, under Rule 403, whatever modest relevant it may have is substantially outweighed by the prejudice.

I will, however, allow the rest of the matter, I think, both as a matter of general background but also on the issue of intent and perhaps materiality.

The other sentences there are relevant. This is without prejudice to defense counsel's argument which I think is probably a pretty good one, though I'm not making a final ruling, that none of this will be adequate to satisfy the

1 statute of limitations issue that the government thinks it goes
2 to.

3 If it goes to that, you better have a lot more, and it
4 better be something that you can get into evidence under the
5 indictment because I don't see that the indictment really
6 speaks to financial institutions worldwide were defrauded.
7 That is a much-too-liberal reading of the indictment and not to
8 be countenanced in a criminal case.

9 I will allow the other sentences and for the reasons
10 given.

11 Now we're up to the last paragraph, which is about the
12 potential for manipulation.

13 Are you an expert in manipulation?

14 THE WITNESS: I've written extensively on it.

15 THE COURT: How did you determine the -- I've been a
16 judge for 20 years, and I've never seen a financial case where
17 there wasn't a potential for manipulation. You just had to
18 know enough about how whatever business or situation it was,
19 and then you could figure out a way to manipulate it to your
20 benefit. Used car salesmen are experts at manipulation.

21 What's special about this?

22 THE WITNESS: So, yes, there are many situations where
23 people can manipulate situations to their advantage. In my
24 teaching, I find that my students often don't recognize these
25 situations. They find it very interesting when I highlight it

FAJQALL1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

14 CR. 272 (JSR)
Trial

5 ANTHONY ALLEN and ANTHONY
6 CONTI,

Defendants.

7 -----x

8 New York, N.Y.
9 October 19, 2015
10 9:10 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge
14 and a Jury

APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
18 BRIAN R. YOUNG
19 CAROL SIPPERLY
20 MICHAEL T. KOENIG
21 Assistant United States Attorneys

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23 Attorneys for Defendant Anthony Allen
24 BY: MICHAEL S. SCHACHTER
25 CASEY DONNELLY

TOR EKELAND, P.C.
Attorneys for Defendant Anthony Conti
BY: TOR EKELAND
AARON WILLIAMSON

FAJQALL3

Robson - direct

1 A. He was our representative at the BBA.

2 THE COURT: The objection is overruled. The document
3 is received.

4 (Government's Exhibit 101U received in evidence)

5 Q. Do you see the second entry the two rates that were flagged
6 by our system?

7 A. Yes.

8 Q. For purely statistical reason?

9 A. Yes.

10 (Continued on next page)

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FAJMAL4

Robson - direct

1 Q. Again, if I could just ask you a few more questions your
2 understanding of the BBA's monitoring and what you would do in
3 connection to that.

4 A. So I believe they had a system where if a rate submitted by
5 some of the banks were significantly higher or lower than the
6 rest of the banks that they would contact that relevant bank
7 and say -- and query their rate and say why is it too high and
8 why is it too low.

9 Q. You developed a strategy in connection to that. So now
10 what was the strategy with respect to limits and then what did
11 you do in connection to the trader positions?

12 MR. EKELAND: Objection.

13 THE COURT: I'm sorry. Ground.

14 MR. EKELAND: Compound question, your Honor.

15 THE COURT: Sustained.

16 Q. First explain, again, what you did in connection to the
17 limits you understood were imposed by the BBA.

18 A. So what I would do is, I would ask the broker where he felt
19 the LIBORs would be. They would then give us -- for example,
20 three months they would give us a number of submissions or
21 possible rates where the three months could be depending on
22 credit rates and stuff like that. So there would be kind of a
23 range of two or three numbers where LIBOR could possibly be.

24 Q. Before I ask about trader positions, let's say no trader
25 request was made. What would you do with that information?

FAJMALL4

Robson - direct

1 A. I would go straight down the middle as much as I could.
2 So, for example, if the broker came on and said, three months I
3 think I'm hearing might be 80, might be 85, might be 90, but
4 probably 75, I would go down the middle.

5 Q. Now, let's say you, in fact, had a trader request where a
6 trader wanted you to submit a LIBOR to favor their position.
7 What would you do?

8 A. So given those circumstances, if one of the traders had
9 contacted me and said three months, if I needed a higher three
10 months, I would have moved it higher at his request. I would
11 have moved it towards the 90 level or set 90.

12 Q. Was that permissible?

13 A. No, it wasn't.

14 MR. SCHACHTER: Objection. Withdrawn.

15 THE COURT: Then I won't have the pleasure of
16 sustaining the objection.

17 Q. Now, you had mentioned Mr. Yagami and Mr. Thompson. Were
18 their positions at ever odds at each other?

19 A. Yes. On some occasions they would have been, yeah.

20 Q. What happened under those circumstances?

21 A. I would normally leave it to those guys to resolve the
22 situation between themselves and just let me know what they
23 wanted.

24 Q. What about you? Were other trader positions ever in
25 conflict with your own interest rate swap positions?

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FANMALL1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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5 ANTHONY ALLEN and ANTHONY
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7 -----x

8 New York, N.Y.
9 October 23, 2015
10 9:25 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
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25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

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FANMALL1 Yagami - cross

1 (Trial resumed; jury not present)

2 THE COURT: Good morning. Please bring in the jury.

3 MR. SCHACHTER: Your Honor, you had asked us to confer
4 on exhibits last night. We did. We reached an agreement. We
5 will offer at the commencement, with the Court's permission and
6 with the's government consent, a subset of exhibits that we
7 wanted to offer.

8 MS. SIPPERLY: And questioning --

9 (Jury present)

10 THE COURT: Good morning, ladies and gentlemen. I
11 neglected to mention to you that my law clerk seated right here
12 is from Canada and, thus, has this strange notion that the
13 Toronto Blue Jays will not only make it to the World Series,
14 but even prevail. I feel we should extend to her our advanced
15 sympathy and condolences.

16 Let's continue with the trial.

17 TAKAYUKI YAGAMI, resumed.

18 CROSS-EXAMINATION (cont'd)

19 BY MR. SCHACHTER:

20 Q. Good morning, Mr. Yagami.

21 A. Good morning.

22 MR. SCHACHTER: Your Honor, I believe with the consent
23 of the government, we will at this time offer Defense Exhibits
24 263 to 285.

25 MS. SIPPERLY: Based on state of mind.

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FANMALL1

Yagami - cross

1 THE COURT: Yes. For the limited purposes agreed to
2 by counsel, it is received.

3 (Defendant's Exhibits 263-285 received in evidence)

4 Q. Mr. Yagami, Mr. Robson told you that it was in his view
5 okay to move his LIBOR setting by one or two basis points
6 because LIBOR moves in a range. Isn't that correct?

7 A. Yes. He mentioned that when I was in London in the year
8 2000.

9 Q. And based on your discussions with Mr. Robson, it was your
10 view that the practice of adjusting submissions by a few basis
11 points based on a trader's interest was a gray area, isn't that
12 correct?

13 A. At the time I understood in the way he just described.

14 Q. And that's because Mr. Robson told you that as long as you
15 kept the submission in a reasonable range you could do it,
16 isn't that correct?

17 A. At the time I understood in this way.

18 Q. And you agreed that there was a range of correct LIBOR
19 rates that he could submit, is that true?

20 A. In the range you can trade and adjust the levels based on
21 interest preferences of certain fixing certain positions. It's
22 agreeable. It's okay to do. That's what I understood at the
23 time.

24 Q. And you also would agree that there was no one single true
25 and correct LIBOR rate for any given day for any given bank,

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FANMALL1

Yagami - cross

1 isn't that correct?

2 A. It's hard to say, but if you are the submitter and doing
3 the cash trade, you have a responsibility to decide a level of
4 the submission of LIBOR. You should have the rate come up in
5 your mind and that should be the rate to be submitted for the
6 LIBOR. In that sense what you mention may be correct. In
7 other sense one submitter decide that level, then that may
8 be -- can be -- the rate has to be submitted.

9 Q. I want to make sure that I understand what you mean when
10 you say in one sense that is correct. It is correct that in
11 your view there was no certain and correct level of LIBOR level
12 on a given day for a given bank. That was your view, correct?

13 A. In answer to your question, especially 2000 when I just
14 joined Rabobank, my understanding was what you just mentioned.

15 Q. Thank you.

16 MR. SCHACHTER: Can we put up on the screen, please,
17 Government Exhibit 601A. This has been received in evidence.
18 I'm sorry, your Honor. May we have a moment.

19 Q. I'm showing you what has been received in evidence as
20 Government Exhibit 601A. Do you recognize that to be a
21 communication between you and Mr. Robson?

22 A. Yes, I do.

23 Q. March 19 of 2008?

24 A. Yes.

25 Q. And I'd like to look at your communication at the very

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FANQALL4

Dornbos - direct

1 and also what other witnesses they are going to have so that we
2 can plot out our schedule for the coming week.

3 In addition, start thinking about how long each party
4 wants for summation because we will want to address that fairly
5 soon as well to factor that into the schedule.

6 Anything anyone needs to raise with the Court?

7 Very good. Thanks a lot.

8 (Luncheon recess)

9 (Continued on next page)

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FANMALL5

Dornbos - direct

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AFTERNOON SESSION

2

2:15 p.m.

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THE COURT: Defense counsel wanted to raise something
4 with the Court.

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MR. SCHACHTER: Yes, your Honor. The government
6 informed us through the testimony of this witness they intend
7 to introduce records of Mr. Allen's, and I believe Mr. Conti's
8 as well, just gross annual compensation. I don't know what
9 fact of consequence their gross compensation could possibly be
10 relevant to.

11

THE COURT: Let's find out.

12

MR. YOUNG: It goes to their intent, your Honor.

13

THE COURT: Why?

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MR. YOUNG: The defendants' intent. Because what the
15 testimony has shown is that the bonus pool at Rabobank was
16 dependent, at least in part, on the performance of the overall
17 bank. And so the defendants had an incentive to have the books
18 do well, even books to which they were not attached, because
19 they want to have --

20

THE COURT: That's already been testified to. What is
21 the actual figures? You would have to know what it would have
22 been with or without their alleged misconduct in order to make
23 any additional argument on it. You already have the argument
24 that their compensation was at least indirectly affected by
25 their alleged misconduct.

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FANMALL5

Dornbos - direct

1 MR. YOUNG: We think that the amount of the
2 compensation provides a window into how great the incentive
3 was.

4 THE COURT: You would only know that if you have a
5 point of comparison. But for the alleged misconduct they would
6 have made -- I'll take an extreme situation -- but for it they
7 would have made \$10 million, and instead they made \$10,050,000.
8 Unless you have that comparison you would say, oh, my gosh,
9 they made \$10,050,000 that year. That must have been the
10 fruits of their illegality where it wouldn't have any tendency
11 to prove that at all.

12 And, conversely, but for the alleged illegal conduct
13 they would have made \$10,000, but instead they made \$50,000,
14 then the incentive would have been arguably very great, but the
15 jury would have no way of knowing that unless they knew what
16 they would have received but for the alleged illegal conduct.
17 I don't see what these gross figures add.

18 MR. YOUNG: We think that the but for differential
19 isn't the only important point.

20 Another important point that the jury can take away
21 from this is that traders who don't do well at trading tend not
22 to stay as traders. They may lose their jobs. They may get
23 fired for performance issues. So if somebody is making a lot
24 of money as a trader, even if we can't identify exactly how
25 much the manipulation influenced that bonus, they could say,

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FANMALL5

Dornbos - direct

1 I'm making a lot of money here and I want to stay at this job
2 making a lot of money.

3 THE COURT: I want to stay at this job making a lot of
4 money because I'm doing it legitimately because they are very
5 good traders. The jury has no way of distinguishing anything
6 about intent from these figures. So the objection is
7 sustained.

8 Let's bring in the jury. Let's get the witness back
9 on the stand.

10 (Jury present)

11 THE COURT: Where is the witness?

12 MR. YOUNG: He is leaving the restroom, your Honor.
13 My apologies.

14 THE COURT: Counsel.

15 MR. YOUNG: Thank you, your Honor.

16 Q. Mr. Dornbos, turning our attention to Exhibit 102C, do you
17 have it in front of you?

18 A. I do.

19 Q. Let's walk through the methodology here and what we see on
20 the exhibit. For each of these slides, what is indicated on
21 the upper right-hand corner of the exhibit?

22 A. That would be the date that's being highlighted here.

23 Q. And is there a communication listed below that?

24 A. There is.

25 Q. What is signified under the communication box?

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FANMALL5

Dornbos - direct

1 A. That's the exhibit from the associated communication.

2 Q. Exhibit number, what's under that?

3 A. You mean the three charts at the bottom?

4 Q. I'm sorry. It says Exhibit 101AM?

5 A. Yes.

6 Q. Is that where you got the information that is summarized in
7 the upper right-hand corner?

8 A. Yes. That's the communication where that information is
9 from.

10 Q. Now, if we go to the middle of the exhibit towards the
11 bottom, are there three tables there?

12 A. Um-hum.

13 Q. What data are we seeing in these three tables?

14 A. Those are the submissions of the 16 panel banks for the
15 data referenced, as well as the day before and after.

16 Q. Where did you get the data for the submissions of the 16
17 panel banks?

18 A. From Thompson Reuters.

19 Q. Is Rabobank the bank that's highlighted?

20 A. Yes, Rabobank is highlighted.

21 Q. In this particular exhibit or this particular chart we see
22 a couple of days where there is a tie. For example, 3.970.
23 You see that part?

24 A. Um-hum.

25 Q. How did you indicate the order when two banks submitted the